

Appeal from decision of California State Office, Bureau of Land Management, declaring placer mining claim abandoned and void. CA MC 47851.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: Robert R. Baird, Montrose, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Frank S. Schiff has appealed 1/ from a decision of the California State Office, Bureau of Land Management (BLM), dated January 27, 1981, declaring the Argyle placer mining claim, CA MC 47851, abandoned and void for failure to file on or before December 30, 1980, evidence of annual assessment work or a notice of intention to hold the claim, pursuant to section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR Subpart 3833.

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1/ The appeal was filed by Robert R. Baird as the "[r]epresentative for Dr. Schiff." There is no indication in the record that Mr. Baird is qualified to practice before the Department, within the meaning of 43 CFR 1.3. Under such circumstances an appeal is ordinarily subject to dismissal unless it is shown the person is authorized to practice before the Department. W. Duane Kennedy, 24 IBLA 152 (1976).

Appellant's mining claim was located prior to October 21, 1976. <sup>2/</sup> On September 13, 1979, a "Proof of Annual Labor" for the subject mining claim for assessment work performed "in the mining assessment work year ending on September 1, 1979," was filed with BLM. By letter dated October 8, 1980, appellant was reminded by BLM that "1979-1980 assessment work notice is due in this office prior to December 30, 1980 (no fee required)."

In his statement of reasons for appeal, appellant contends that the failure to file timely was due to an "oversight." He states that he "was involved during November in moving his office to a new medical building" and that the job of filing the necessary document was assigned to "a representative," who apparently failed to file.

[1] The owner of an unpatented mining claim, located prior to October 21, 1976, must file with the proper BLM office by October 22, 1979, and on or before December 30 of each calendar year thereafter, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the claim. 43 U.S.C. § 1744(a) (1976); 43 CFR 3833.2-1(a). Failure to file the required instrument is deemed conclusively to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

The filing deadline for the 1980 assessment year was December 30, 1980. In the absence of evidence that BLM did receive timely either evidence of annual assessment work or a notice of intention to hold the claim, BLM properly declared the claim abandoned and void. M.D.C., Inc., 57 IBLA 35 (1981); Dave R. Newman, 57 IBLA 23 (1981). The fact that failure to file timely may have been due to the negligence of appellant's "representative" does not alter the result. The Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Western Mining Council v. Watt, 643 F.2d 618, 628 (9th Cir. 1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

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<sup>2/</sup> The record indicates that a copy of appellant's notice of location has never been filed with BLM, despite two letters from BLM, dated Sept. 28, 1979, and Oct. 8, 1980, informing appellant of the requirement for filing this document. Since one of the two proofs of labor submitted to BLM in September and October of 1979 was recorded with the San Bernardino County Recorder in August of 1965 it is clear the claim was located prior to Oct. 21, 1976. The deadline for filing appellant's notice of location was Oct. 22, 1979. 43 CFR 3833.1-2(a). This failure to file timely must itself result in the mining claim being declared abandoned and void. See 43 U.S.C. § 1744(b) and (c); 43 CFR 3833.1-2(a) and 3833.4(a); e.g., Walter Schivo, 53 IBLA 40 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.

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Administrative Judge

We concur:

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Gail M. Frazier  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

